

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT INDIANA**

MALIBU MEDIA, LLC,)	
)	
Plaintiff,)	Civil Case No. <u>1:12-cv-01116-RLY-MJD</u>
)	
v.)	
)	
MEGAN RUMPKE, ZHIWEI XIAO,)	
JOHN MUTZ, TIM DODD, JENNIFER)	
FOREMAN, NICK WHETSEL,)	
HAISHAN WANG and JOHN DOE 1,)	
)	
Defendants.)	
)	

**PLAINTIFF’S REPLY IN SUPPORT OF ITS MOTION
FOR EXTENSION OF TIME TO COMPLETE DISCOVERY**

I. INTRODUCTION

Plaintiff respectfully requests the Court grant its motion for extension of time to complete discovery. First, contrary to Defendant’s assertions, extending discovery will significantly aid in the judicial efficiency and management of this case. Second, Defendant will not be prejudiced but will instead benefit from an extension if Defendant chooses to hire an attorney. Third, to date, Defendant has still not provided Plaintiff with his amended discovery responses and Plaintiff has a pending motion to compel. For the foregoing reasons, as set forth below, Plaintiff respectfully requests the Court grant its motion.

II. ARGUMENT

A. Extending Discovery Will Aid in Judicial Efficiency

Extending discovery will aid in judicial efficiency by enabling Plaintiff to depose Comcast by either phone or video instead of requiring Comcast to travel to trial. Further, it will enable Plaintiff to depose Defendant’s neighbors and roommates instead of calling them to trial.

Additionally, it will provide more time for the parties to work out stipulations. As Defendant stated in his opposition, the parties had proposed stipulations regarding the Comcast deposition. Plaintiff, however, rejected Defendant's stipulation because he requested it include: "Comcast was the ISP for Nick Whetsel, on June 12, 2012, and that was an open wifi connect." This is a key fact that has not been proven by Defendant. Clearly, Plaintiff cannot stipulate to it. Allowing more time for discovery, however, will enable the parties to further discuss these issues and potentially avoid additional costs and burdens on third party companies.

B. Extending Discovery Will Benefit Defendant

Defendant claims he will be prejudiced by a discovery extension but does not explain how he will be prejudiced. If Defendant chooses to retain an attorney, it is almost certain that he will benefit by an extension of discovery by having his attorney review the facts of the case and develop any defenses on his behalf. Further, Defendant has informed Plaintiff he has an expert witness, but has not submitted a report. An extension of discovery will potentially enable Defendant to complete this process.

C. Extending Discovery Will Enable Plaintiff to Receive Defendant's Complete Discovery Responses

Finally, extending discovery will enable Plaintiff to receive Defendant's complete discovery responses. Plaintiff served Defendant discovery with more than an adequate amount of time provided by the Court for Defendant to respond under the Federal Rules. Defendant, however, refused to provide complete or adequate responses forcing Plaintiff to file a motion to compel. Because of his delay, Plaintiff has been unable to receive its requested information.

III. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests the Court enter an order extending the time within which the Parties have to complete discovery until February 4, 2014.

Dated: December 4, 2013

Respectfully submitted,

NICOLETTI & ASSOCIATES, PLLC

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CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2013, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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By: /s/ Paul J. Nicoletti